

REPORT OF THE FISH & WILDLIFE RULES STEERING COMMITTEE

August 28, 2008

Introduction

At the January 22, 2008 Natural Resources Commission (*NRC*) Meeting, Chairman Poynter announced a plan to initiate a comprehensive review of the fish and wildlife rules. The purpose of this effort is to address the public's concern that the rules, as they presently exist, are confusing and difficult for the consumer to understand. Colonel Mike Crider, Department of Natural Resources (*DNR*) Law Enforcement Division reported that the lack of clarity in certain of the rules has in some instances resulted in the inability to obtain enforcement.

Patrick Early, Advisory Council Chair; John Goss, Executive Director of the Indiana Wildlife Federation; John Davis, Deputy Director of the DNR; Col. Mike Crider, DNR Division of Law Enforcement; and Sandra Jensen, NRC Administrative Law Judge; accepted Chairman Poynter's invitation to serve on a Steering Committee to conduct an initial evaluation of this potential project. The Steering Committee's role was to determine the feasibility and the scope of the project while developing a blueprint for carrying the project forward. The Steering Committee met on four occasions between April and July, 2008 and offers this report of its findings and recommendations.

The Steering Committee has concluded that the project is necessary and feasible to ensure the integrity of DNR's Fish and Wildlife Rules. The project is recommended to be divided into four (4) distinct stages that will allow necessary and required rule adoption processes to be fulfilled in an orderly, yet efficient manner. By accomplishing the overall project through the completion of individualized stages it is also hoped that public understanding of each stage will be enhanced and public involvement in the entirety of the project will be facilitated. As is always the case, the NRC is very interested in receiving and considering public input throughout each stage of this project. It is the Steering Committee's intent that although events associated with Stages 2 and 3 will overlap in time to some extent, the very distinct characteristics of each stage

combined with the greatest degree of time separation deemed reasonable will prevent unnecessary confusion of NRC's consumers.

One primary consideration in dividing the project into distinct stages was to separate the substantive amendment and addition proposals from those amendment proposals that are essentially non-substantive in nature. It is also hoped that by separating the substantive and non-substantive components of the project that the public will be better able to identify individual rule amendments such that they will be encouraged to actively engage in the adoption process associated with rule amendments of particular interest and concern, which will improve the receipt of relevant input with respect to those items.

The Steering Committee's identified four (4) stages are, (1) Readoption of 312 IAC 9; (2) Essentially Non-Substantive Clarification Amendments; (3) Consideration of Substantive Amendments; and (4) Potential Legislative Initiatives. The remainder of this report will discuss each stage in significant detail.

Stage 1: Readoption of 312 IAC 9

As relevant to the DNR's Fish and Wildlife Rules, Indiana Code § 4-22-2.5-2 dictates that the rules will expire on "January 1 of the seventh year after the year in which the rule takes effect..." Application of I.C. § 4-22-2.5-2 will result in the expiration of the fish and wildlife rules, adopted at 312 IAC 9, in January 2010 unless the rules are readopted pursuant to Indiana Code § 4-22-2.5-3 before that time. The NRC and its Division of Hearings would customarily initiate the readoption process in or near January 2009.

While the initiation of the readoption process in January of the year preceding expiration has proved sufficient to ensure against the expiration of rules, it was the Steering Committee's determination that delaying the readoption process could, in turn, cause delay in the initiation of the "Essentially Non-Substantive Clarification Amendments" covered in Stage 2 of the project. It was recognized that essentially non-substantive amendments, could arguably be proposed and moved forward in conjunction with the readoption. However, the Steering Committee determined that the review of the rules could not be completed to the degree or with the quality desired in order to allow the

essentially non-substantive amendments to be prepared and ready to proceed by January 2009. Consequently, it was decided that the readoption of 312 IAC 9, without change, should be initiated immediately.

The Notice of Intent to Readopt 312 IAC 9 was submitted for publication on August 12, 2008.

By readopting 312 IAC 9 immediately there will be no concern that the Division of Fish and Wildlife's rules could expire during the continuing implementation of this comprehensive project. Also, the immediate initiation of the readoption process for 312 IAC 9 will allow for that process to be fully completed before rule packages proposed in Stage 2 are presented to the NRC for preliminary adoption.

Stage 2: Essentially Non-Substantive Clarification Amendments

The goal of this stage of the project is to enhance clarity and consistency of interpretation as well as improve enforceability, without making any significant substantive amendments to the rules. One example of amendments that would be moved forward during this stage of the project include replacing the definition of "handicap" found at 312 IAC 9-1 with "disabled" because a review of the entirety of the fish and wildlife rules indicates that while the definition of the term "handicap" was not deleted and a definition of the term "disabled" was not added, the term "handicap" has been replaced throughout 312 IAC 9 with the term "disabled." A second example would be an amendment regarding the applicability of sport fishing definitions found at 312 IAC 9-6-1, which are, at present, expressly applicable only to rules 7, 8 and 10 of that Rule. While the definitions are expressly applicable to only three of the sport fishing sections, the defined terms are used in many of the remaining sections within that rule.

Additional amendments that would occur during this stage of the project would include amending rule language and/or formatting for the purpose of enhancing understandability and enforceability.

It was decided that rule proposals occurring as part of stage 2 will occur in three (3) segments. The segmentation will result in smaller rule packages with fewer amendments per package, which should render the rule packages somewhat less onerous for the public to evaluate and for staff to prepare and process. The planned segments will be the deer hunting rules (312 IAC 9-3-2 - 9) and hunter education (312 IAC 12), which are expected to proceed for preliminary adoption in January 2009. In March 2009 it is anticipated that one-half of the remaining rules, including definitions, general restrictions & standards associated with wild animals, mammals and game birds (except deer), (312 IAC 1 – 312 IAC 4), would be prepared for presentation for preliminary adoption. The remaining rules, which would include reptiles, amphibians, fish, invertebrates, commercial licenses and permits (312 IAC 5 through 312 IAC 11) would be presented for preliminary adoption by the NRC in May 2009.

The three (3) actual proposed rule packages will be brought to the NRC for preliminary adoption and will be processed in accordance with the rule adoption checklist that has now been posted to the NRC's website. Since these packages are expected to make very few or no substantive changes but will serve to simply enhance clarity and enforceability it is the Steering Committee's belief that there should be little controversy associated with amendment offered during this stage of the project. The length of time between preliminary adoption and final processing of these rule amendment packages is, in large part, dictated by the amount of time taken by the Office of Management and Budget (OMB) to review the proposed rule and associated fiscal analyses.

It is hoped that all amendment packages proposed during stage 2 of the project will have been completely through the adoption process and approved by the Governor by October to November 2009.

Stage 3: Consideration of Substantive Amendments

For stage 3 of the project, the Steering Committee has set forth a general process by which to receive and systematically consider suggestions offered by the public regarding potential substantive amendments to the fish and wildlife rules. This process will also be

utilized to evaluate substantive amendments that have been previously identified, requested or suggested but which have not yet been acted upon.

Notice of Opportunity to Offer Suggestions:

The Steering Committee determined that notice by regular mailing should be minimized because it is believed that widespread notice of this aspect of the project can be accomplished through electronic mediums. By providing notice through electronic formats, financial burdens upon the DNR associated with regular mail will also be reduced. It is the Steering Committee's expectation that DNR's Divisions and staff will be relied upon to issue the electronic notices to individual license holders and through the *Wild Bulletin*, as well as through the issuance of one or more press releases. The Division of Fish and Wildlife maintains periodic communications with fishing organizations, hunting organizations, wildlife conservation groups, etc. and it is further anticipated that these organizations will be provided notification along with the request that they pass the information along to their memberships.

A limited amount of regular mail may be required for groups of license holders for whom email addresses are not available. It is thought that these individuals may include game breeders license holders, wild animal rehabilitation permit holders, and others who possess wild animal possession permits. The Division of Fish and Wildlife reports that the numbers of these permit and license holders is not significant.

It was also decided that a "talking points" sheet should be available to DNR and NRC staff who may receive inquiries about this project. Additionally Col. Crider believed that conservation officers should be equipped with something similar to business cards that they could pass out to interested people.

The primary goal is to provide the public with consistent communications with respect to this project. The Steering Committee identified two particular items that are of utmost importance with respect to public communication. First, is to highlight the distinct differences between the essentially non-substantive amendment packages that will

proceed under stage 2 and the predominantly substantive amendments that will be considered under stage 3. Secondly, it is imperative that the communications consistently refer the public to the correct resource for offering suggestions for substantive amendments. Therefore, the press releases, wild bulletin notices, talking points memos, etc., as well as individual email notices must be uniform in content. For that reason the Steering Committee believes that the talents of DNR's Communications Department should be employed to prepare each of these documents.

Receiving Public Suggestions:

It was decided that public suggestions for substantive amendment will be received only through a web-based suggestion form. That form will be accessible through the DNR Division of Fish and Wildlife's web site. It is expected that the suggestion form will be designed to provide at least limited drop menus, including such categories as "deer hunting", "turkey hunting", "trapping", "fishing", etc. that will be useful in sorting the suggestions received. However, it is hoped that a person will be provided the opportunity to offer their suggestion in an open-ended email type format. Out of necessity, the suggestion space will be limited by number of words or number of characters and only one suggestion will be allowed per form.

It is the expectation of the Steering Committee that the suggestion form will be operational in October 2008, or as soon thereafter as possible, and remain in operation for a period of four (4) months from inception.

Consideration of Received Suggestions:

Following the close of the suggestion period, the Steering Committee recommends that the Advisory Council, in conjunction with staff of the DNR, particularly staff of the Divisions of Fish and Wildlife and Law Enforcement, form a workgroup to sort and conduct preliminary review of the suggestions received. Thereafter, the Advisory Council will accept primary responsibility for conducting additional review into the merit of the suggestions received.

Pat Early, as Chair of the Advisory Council, suggested that the process of reviewing the suggestions may include three or more public hearings at which the public may offer additional input and the suggestions can be further discussed, refined and evaluated. Ultimately, the Advisory Council will offer a report to the NRC regarding the suggested substantive amendments received and the process undertaken for the review of those suggestions with a recommendation regarding further action on the suggested substantive amendments.

Processing Substantive Amendment Proposals:

Suggested substantive amendments that are recommended for further action by the Advisory Council are expected to proceed in the same manner as any rule package processed by the NRC. The Steering Committee anticipates that preliminary adoption of the substantive amendments by the NRC will occur only after all three stage 2 amendment packages are completed. Therefore, with the expectation that the stage 2 amendment packages will be completed by late 2009, it is presently anticipated that substantive amendment packages will not proceed for preliminary adoption by the NRC before early 2010.

It is presently planned that each substantive amendment will proceed individually or be grouped according to topic. This method is consistent with customary practices of the NRC in the adoption of substantive amendments and provides for efficiency with respect to the rule adoption process. This method also promotes understanding of the individual amendment packages by the interested public. It is recognized that certain of these substantive amendments may raise significant controversy or may be of extreme public interest. Proceeding with the substantive amendments either individually or in topic specific groupings will promote the ability of the public to identify those packages that are of interest leading to increased relevant public input and involvement.

Stage 4: Identified Legislative Initiatives

The Steering Committee identified this stage as a means of addressing suggested substantive amendments that are deemed worthwhile or even necessary but, which cannot

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be pursued absent the amendment of existing statutory provisions. While there is no way of knowing whether such topics will be identified, the sole purpose of this stage is to facilitate further discussion should the need arise through this project.

Sandra L. Jensen
On Behalf of the Fish and Wildlife Rules Steering Committee